

ADMINISTRATIVE - INTERNAL USE ONLY

INSPECTOR GENERAL

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MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION :

FROM :

Deputy Inspector General

SUBJECT : Proposed Chapter 78 to Title V, USC

1. The draft legislation is based on an interesting concept, whereby the injured party can personally prosecute possible disciplinary action against a government employee, in addition to receiving such an award as he or she may have. I guess that many of us would like to see this principle applied to the protective association known as the Congress so we really cannot complain when it provides for private punitive action in addition to such disciplinary action as the federal agency in question may administer. More seriously, however, it is bad practice.

2. Apparently the provisions of the act take effect only if a complainant wins an award. If successful the complainant has to make his request for "an administrative inquiry" within 30 days of the award. The object of the inquiry is the conduct of the employee which led to the action for which the award was granted.

3. Section 7802(b)1 seems to allow for there to be no "hearings", by virtue of the reference to "if a hearing is held." As you and I discussed, the Inspector General does not conduct "hearings" but does investigations instead. Under this section we apparently would be free to continue our present practices, if something else were not imposed on the system.

4. Section 7805(a) provides that the Civil Service Commission establish procedures for the way the inquiries should be conducted. That could, conceivably, require the establishment of a formal hearing structure that CIA does not now have. If formal hearings were required, this would cause a special problem for CIA, as the prosecuting complainant has a right to attend hearings. Depending on the subject matter this may involve a disclosure of intelligence sources and methods.

5. I noticed that in Section 7802(b)2, and in Section 7803, and in Section 7805(b) the Armed Forces are exempt and the Secretary of Defense can establish his own proceedings; we should be entitled

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to similar provisions: I note that Section 7802(a)3 has one minor provision which recognizes "the interest of the national security"; we should press for an extension of that to other aspects of the question against the event that should CIA ever find itself involved in such a proceeding.

6. Section 7804 provides for the complainant to appeal to the courts, which are authorized to order "further proceedings". Open court review raises the question of sources and methods, and were the court to order "further proceedings" that were of an open nature we could find ourselves in an intolerable situation.

7. My reaction to the legislation is that at this point it is badly considered and badly drafted. The Agency should oppose it in this form, at least, and if something similar to it eventually gains support then the Agency should seek special provision for the way in which it conducts the inquiry and reports its findings.



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